

KM

WO

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Floyd Smith,

Plaintiff,

v.

Unknown, et al.,

Defendants.

No. CV 22-02113-PHX-JAT (CDB)

**ORDER**

Pending before the Court are Plaintiff's Motion for Extension of Time to File Amended Complaint (Doc. 8), First Amended Complaint (Doc. 9), and Motion for Appointment of Counsel (Doc. 11). The Court will grant the Motion for Extension of Time, accept the First Amended Complaint as timely filed, deny the Motion for Appointment of Counsel, and dismiss the First Amended Complaint with leave to amend.

**I. Background**

On December 14, 2022, Plaintiff Floyd Smith, who is confined in the Arizona State Prison Complex-Lewis, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed In Forma Pauperis. In a January 19, 2023 Order, the Court granted the Application to Proceed and dismissed the Complaint with leave to amend. On February 9, 2023, Plaintiff filed a Motion for Extension of Time. On February 23, 2023, he filed a First Amended Complaint and Motion for Appointment of Counsel.

**II. Statutory Screening of Prisoner Complaints**

The Court is required to screen complaints brought by prisoners seeking relief

1 against a governmental entity or an officer or an employee of a governmental entity. 28  
 2 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
 3 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which  
 4 relief may be granted, or that seek monetary relief from a defendant who is immune from  
 5 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

6 A pleading must contain a “short and plain statement of the claim *showing* that the  
 7 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does  
 8 not demand detailed factual allegations, “it demands more than an unadorned, the-  
 9 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 10 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
 11 conclusory statements, do not suffice.” *Id.*

12 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
 13 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
 14 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
 15 that allows the court to draw the reasonable inference that the defendant is liable for the  
 16 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for  
 17 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
 18 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual  
 19 allegations may be consistent with a constitutional claim, a court must assess whether there  
 20 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

21 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
 22 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342  
 23 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent  
 24 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551  
 25 U.S. 89, 94 (2007) (per curiam)).

26 If the Court determines that a pleading could be cured by the allegation of other  
 27 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal  
 28 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).

1 Plaintiff's First Amended Complaint will be dismissed for failure to state a claim, but  
2 because it may possibly be amended to state a claim, the Court will dismiss it with leave  
3 to amend.

### 4 **III. First Amended Complaint**

5 Plaintiff names the Arizona Department of Corrections, Rehabilitation, and Reentry  
6 (ADC) and Tactical Search Unit (TSU) Officers John Doe 1 – 5 as Defendants in his three  
7 count First Amended Complaint. Plaintiff seeks injunctive relief and money damages.

8 In **Count One**, Plaintiff alleges Defendants violated his Eighth Amendment rights  
9 when they used excessive force on him. Plaintiff claims that on April 27, 2022, a TSU  
10 search team conducted a search of Plaintiff's unit in response to a prisoner attacking a  
11 correctional officer the previous day. The attacking prisoner had already been removed  
12 from the unit. Each prisoner was required to go through a metal detector before re-entering  
13 the unit. Plaintiff set off the metal detector because he has metal in his body. Plaintiff also  
14 has a dislocated shoulder and requested "two sets of cuffs due to his shoulder issue." In  
15 response, Defendant Doe 1 "got upset and said he was not playing." Defendant Doe 1 then  
16 grabbed Plaintiff's right shoulder and escorted him outside and told him to lay face down,  
17 on the dirt. Plaintiff had difficulty breathing and asked to change positions, but was told  
18 he could not.

19 Defendants Doe 2 and Doe 3 held Plaintiff down, making it harder for him to  
20 breathe. Plaintiff requested water, but was denied. A nurse came with Plaintiff's  
21 medications but Plaintiff was denied his medications. Plaintiff claims his "PTSD  
22 symptoms began and when that happened Defendants John Does 2 and 3 picked up . . .  
23 Plaintiff and took him inside as he was not responding well." After some time, Plaintiff  
24 was taken back outside and told to lay in the dirt, face down. Plaintiff states that "after all  
25 this, [he] was able to see a mental health person and that is when he was able to get the  
26 needed medications and water." Plaintiff claims "this is the Defendant [ADC's] way of  
27 doing things—punish innocent inmates when only one or two do something wrong."

28 In **Count Two**, Plaintiff claims Defendant ADC retaliated against him, in violation

1 of the Eighth Amendment. Plaintiff asserts Defendant ADC has policies that “cause harm  
2 in one form or another when an employee is attacked or if an inmate acts weird.” Plaintiff  
3 contends “several other inmates are subjected to harsh punishment, mass punishment is the  
4 standard that is done in retaliation and nothing more.” Plaintiff claims that retaliation by  
5 staff “towards innocent inmates only brings up additional mental harm and ways inmates  
6 can think of getting even.”

7 In **Count Three**, Plaintiff alleges Defendants Doe 4 and Doe 5 violated his Fifth  
8 and Fourteenth Amendment rights when they took Plaintiff’s property “for no reason other  
9 than retaliation for the attack on another officer and complaining about the treatment  
10 handed down.” Plaintiff claims he lost his property without due process.

#### 11 **IV. Failure to State a Claim**

##### 12 **A. Count One**

13 When a prisoner claims that prison officials violated his Eighth Amendment rights  
14 by using excessive physical force, the relevant inquiry is “whether force was applied in a  
15 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause  
16 harm.” *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). However, the Supreme Court has  
17 made it clear that not every use of physical force violates the Eighth Amendment:

18 That is not to say that every malevolent touch by a prison guard  
19 gives rise to a federal cause of action. *See Johnson v. Glick*,  
20 481 F.2d [1028, 1033 (2nd Cir. 1973)] (“Not every push or  
21 shove, even if it may later seem unnecessary in the peace of a  
judge’s chambers, violates a prisoner’s constitutional rights”).

22 *Id.* at 9.

23 Plaintiff’s facts suggest the force used against him was applied as part of an effort  
24 maintain or restore discipline, not maliciously or sadistically for the purpose of causing  
25 harm. Plaintiff therefore fails to state an Eighth Amendment excessive force claim.

26 To the extent Plaintiff may intend to raise an Eighth Amendment threat-to-safety  
27 claim, he has also failed to state a claim. To state an Eighth Amendment conditions-of-  
28 confinement or threat-to-safety claim, plaintiffs must meet a two-part test. “First, the

1 alleged constitutional deprivation must be, objectively, sufficiently serious” such that the  
 2 “official’s act or omission must result in the denial of the minimal civilized measure of  
 3 life’s necessities.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotations  
 4 omitted). Second, the prison official must have a “sufficiently culpable state of mind,” i.e.,  
 5 he must act with “deliberate indifference to inmate health or safety.” *Id.* (internal  
 6 quotations omitted). Deliberate indifference is a higher standard than negligence or lack  
 7 of ordinary due care for the prisoner’s safety. *Id.* at 835. In defining “deliberate  
 8 indifference” in this context, the Supreme Court has imposed a subjective test: “the official  
 9 must both be aware of facts from which the inference could be drawn that a substantial risk  
 10 of serious harm exists, *and* he must also draw the inference.” *Id.* at 837 (emphasis added).

11 Plaintiff has not alleged facts showing that Defendants’ actions placed him at  
 12 substantial risk of suffering serious harm, that Defendants were actually aware of this risk,  
 13 and that they failed to act. Plaintiff has therefore failed to state a claim in Count One.

#### 14 **B. Count Two**

15 Plaintiff claims Defendant ADC “retaliates” against prisoners by punishing  
 16 prisoners as a group for the actions of one prisoner. The ADC is not a proper Defendant.  
 17 Under the Eleventh Amendment to the Constitution of the United States, a state or state  
 18 agency may not be sued in federal court without its consent. *Pennhurst State Sch. & Hosp.*  
 19 *v. Halderman*, 465 U.S. 89, 100 (1984); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).  
 20 Furthermore, “a state is not a ‘person’ for purposes of section 1983. Likewise ‘arms of the  
 21 State’ such as the Arizona Department of Corrections are not ‘persons’ under section  
 22 1983.” *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (citation  
 23 omitted). Therefore, the Court will dismiss Defendant ADC and Count Two.

#### 24 **C. Count Three**

25 In Count Three, Plaintiff alleges Defendants Doe 4 and Doe 5 wrongfully  
 26 confiscated his property, without due process. Unauthorized and intentional deprivations  
 27 of a prisoner’s property do not constitute a violation of the procedural requirements of the  
 28 Due Process Clause of the Fourteenth Amendment if a meaningful post-deprivation remedy

1 for the loss is available. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). The availability of  
 2 a common-law tort suit against a state employee constitutes an adequate post-deprivation  
 3 remedy. *Id.* at 534-35. Moreover, Arizona provides a meaningful and adequate post-  
 4 deprivation remedy through the prison grievance system, specifically Department Order  
 5 909(8.0). *Dennison v. Ryan*, 522 F. App'x 414, 417-18 (9th Cir. 2013); *Aldrete v. Ariz.*  
 6 *Dep't of Corr.*, 2011 WL 30959, at \*7 (D. Ariz. Jan. 3, 2011); *see also Wright v. Riveland*,  
 7 219 F.3d 905, 918 (9th Cir. 2000) (both state tort claims *and* prison grievance procedures  
 8 provide adequate post-deprivation remedies). Accordingly, Plaintiff has failed to state a  
 9 claim in Count Three.

#### 10 **V. Leave to Amend**

11 For the foregoing reasons, the Court will dismiss Plaintiff's First Amended  
 12 Complaint for failure to state a claim upon which relief may be granted. Within 30 days,  
 13 Plaintiff may submit a second amended complaint to cure the deficiencies outlined above.  
 14 The Clerk of Court will mail Plaintiff a court-approved form to use for filing a second  
 15 amended complaint. If Plaintiff fails to use the court-approved form, the Court may strike  
 16 the second amended complaint and dismiss this action without further notice to Plaintiff.

17 Plaintiff must clearly designate on the face of the document that it is the "Second  
 18 Amended Complaint." The second amended complaint must be retyped or rewritten in its  
 19 entirety on the court-approved form and may not incorporate any part of the original  
 20 Complaint or First Amended Complaint by reference. Plaintiff may include only one claim  
 21 per count.

22 In each count, Plaintiff must write short, plain statements telling the Court: (1) the  
 23 constitutional right Plaintiff believes was violated; (2) the name of the Defendant who  
 24 violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action or  
 25 inaction of that Defendant is connected to the violation of Plaintiff's constitutional right;  
 26 and (5) what specific injury Plaintiff suffered because of that Defendant's conduct. *See*  
 27 *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

28 Plaintiff must repeat this process for each person he names as a Defendant. If

1 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific  
 2 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for  
 3 failure to state a claim. **Conclusory allegations that a Defendant or group of**  
 4 **Defendants has violated a constitutional right are not acceptable and will be**  
 5 **dismissed.**

6 A second amended complaint supersedes the original Complaint and First Amended  
 7 Complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v.*  
 8 *Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court  
 9 will treat the original Complaint and First Amended Complaint as nonexistent. *Ferdik*,  
 10 963 F.2d at 1262. Any cause of action that was raised in the original Complaint or First  
 11 Amended Complaint and that was voluntarily dismissed or was dismissed without  
 12 prejudice is waived if it is not alleged in a second amended complaint. *Lacey v. Maricopa*  
 13 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

#### 14 **VI. Motion for Appointment of Counsel**

15 There is no constitutional right to the appointment of counsel in a civil case. *See*  
 16 *Ivey v. Bd. of Regents*, 673 F.2d 266, 269 (9th Cir. 1982). In proceedings in forma pauperis,  
 17 the court may request an attorney to represent any person unable to afford one. 28 U.S.C.  
 18 § 1915(e)(1). Appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only when  
 19 “exceptional circumstances” are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.  
 20 1991). A determination with respect to exceptional circumstances requires an evaluation  
 21 of the likelihood of success on the merits as well as the ability of Plaintiff to articulate his  
 22 claims pro se in light of the complexity of the legal issue involved. *Id.* “Neither of these  
 23 factors is dispositive and both must be viewed together before reaching a decision.” *Id.*  
 24 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

25 Having considered both elements, it does not appear at this time that exceptional  
 26 circumstances are present that would require the appointment of counsel in this case.  
 27 Plaintiff is in no different position than many pro se prisoner litigants. Thus, the Court will  
 28 deny without prejudice Plaintiff’s Motion for Appointment of Counsel.



1     **VII.   Warnings**

2             **A.     Release**

3             If Plaintiff is released while this case remains pending, and the filing fee has not  
4     been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court  
5     that he intends to pay the unpaid balance of his filing fee within 120 days of his release or  
6     (2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may  
7     result in dismissal of this action.

8             **B.     Address Changes**

9             Plaintiff must file and serve a notice of a change of address in accordance with Rule  
10    83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
11    relief with a notice of change of address. Failure to comply may result in dismissal of this  
12    action.

13            **C.     Possible “Strike”**

14            Because the First Amended Complaint has been dismissed for failure to state a  
15    claim, if Plaintiff fails to file a second amended complaint correcting the deficiencies  
16    identified in this Order, the dismissal may count as a “strike” under the “3-strikes”  
17    provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring  
18    a civil action or appeal a civil judgment in forma pauperis under 28 U.S.C. § 1915 “if the  
19    prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility,  
20    brought an action or appeal in a court of the United States that was dismissed on the  
21    grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be  
22    granted, unless the prisoner is under imminent danger of serious physical injury.” 28  
23    U.S.C. § 1915(g).

24            **D.     Possible Dismissal**

25            If Plaintiff fails to timely comply with every provision of this Order, including these  
26    warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d  
27    at 1260-61 (a district court may dismiss an action for failure to comply with any order of  
28    the Court).



**IT IS ORDERED:**

(1) Plaintiff's Motion for Extension of Time (Doc. 8) is **granted**; the First Amended Complaint is deemed to be timely filed.

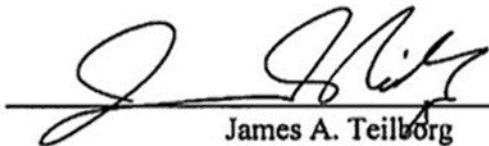
(2) Plaintiff's Motion for Appointment of Counsel (Doc. 11) is **denied**.

(3) The First Amended Complaint (Doc. 9) is **dismissed** for failure to state a claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint in compliance with this Order.

(4) If Plaintiff fails to file a second amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice that states that the dismissal may count as a "strike" under 28 U.S.C. § 1915(g) and deny any pending unrelated motions as moot.

(5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil rights complaint by a prisoner.

Dated this 20th day of April, 2023.

  
James A. Teilborg  
Senior United States District Judge

**Instructions for a Prisoner Filing a Civil Rights Complaint  
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4 provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing and Administrative Fees. The total fees for this action are \$402.00 (\$350.00 filing fee plus \$52.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$402 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 130  
401 West Washington Street, SPC 10  
Phoenix, Arizona 85003-2119

**OR**

Tucson Division:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 1500  
405 West Congress Street  
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed  
this \_\_\_\_\_ (month, day, year) to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attorney for Defendant(s)

\_\_\_\_\_  
(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

**HEADING:**

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

**Part A. JURISDICTION:**

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

**Part B. PREVIOUS LAWSUITS:**

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

**Part C. CAUSE OF ACTION:**

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.
3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. Injury. State precisely how you were injured by the alleged violation of your rights.
5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

**Part D. REQUEST FOR RELIEF:**

Print the relief you are seeking in the space provided.

**SIGNATURE:**

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

**FINAL NOTE**

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

\_\_\_\_\_  
Name and Prisoner/Booking Number

\_\_\_\_\_  
Place of Confinement

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

**(Failure to notify the Court of your change of address may result in dismissal of this action.)**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

\_\_\_\_\_,  
(Full Name of Plaintiff)

Plaintiff,

v.

(1) \_\_\_\_\_,  
(Full Name of Defendant)

(2) \_\_\_\_\_,

(3) \_\_\_\_\_,

(4) \_\_\_\_\_,

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

**CASE NO.** \_\_\_\_\_  
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT  
BY A PRISONER**

- ☐ Original Complaint  
☐ First Amended Complaint  
☐ Second Amended Complaint

**A. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to:

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

☐ Other: \_\_\_\_\_.

2. Institution/city where violation occurred: \_\_\_\_\_.

## B. DEFENDANTS

1. Name of first Defendant: \_\_\_\_\_. The first Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)
2. Name of second Defendant: \_\_\_\_\_. The second Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)
3. Name of third Defendant: \_\_\_\_\_. The third Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)
4. Name of fourth Defendant: \_\_\_\_\_. The fourth Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

## C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? \_\_\_\_\_. Describe the previous lawsuits:
  - a. First prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - b. Second prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - c. Third prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.





## COUNT II

1. State the constitutional or other federal civil right that was violated: \_\_\_\_\_.

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
- |  |   |   |                                       |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities             | <input type="checkbox"/> Mail             | <input type="checkbox"/> Access to the court  | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings      | <input type="checkbox"/> Property         | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation  |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____         |                                       |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not.

### COUNT III

1. State the constitutional or other federal civil right that was violated: \_\_\_\_\_.

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
- |  |   |   |                                       |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities             | <input type="checkbox"/> Mail             | <input type="checkbox"/> Access to the court  | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings      | <input type="checkbox"/> Property         | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation  |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____         |                                       |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_

**If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.**

**E. REQUEST FOR RELIEF**

State the relief you are seeking:

---

---

---

---

---

---

---

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF PLAINTIFF

\_\_\_\_\_  
(Name and title of paralegal, legal assistant, or  
other person who helped prepare this complaint)

\_\_\_\_\_  
(Signature of attorney, if any)

\_\_\_\_\_  
(Attorney's address & telephone number)

**ADDITIONAL PAGES**

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.